



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

May 1, 1939

Mr. E. L. Shelton
County Auditor
Johnson County
Cleburne, Texas

Dear Sir:

Opinion No. O-707

Re: Question of county commissioner violating a Penal statute of the State of Texas when he uses county machinery for terracing farms without first getting approval of Commissioners' Court.

Your request for an opinion on the following question:

"Does a county commissioner violate a statute when he uses county machinery for terracing farms without first getting the approval of the Commissioners' Court? May he do special contract work with road machinery without the consent of the court? May he use a county car in going to and from court meetings?"

has been received by this office.

Section 3 of Article 2372a of Vernon's Civil Statutes of the State of Texas, Ann., reads as follows:

"The counties of the state are hereby declared to have the authority to employ, or permit to be employed, any road construction or other machinery or road equipment in the service of soil conservation and prevention of soil waste through erosion, wherever

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in the judgment of the county commissioners' court, entered upon the minutes of the court, such machinery or equipment is not demanded for the service of building and the up-keep of the roads of the county; and shall provide for compensation to the county road fund, or the road fund of any defined district or authorized subdivision in the county, for such employment of road equipment."

Section 4 of the same article reads as follows:

"In the public service of conserving the soil fertility of the land of the county, the commissioners' court shall have the authority to cooperate with the landowners and taxpayers of the county in all judicious efforts for the preservation of the productiveness of the soil from avoidable waste, and loss of productiveness of agricultural crops necessary to the public welfare, through permission to use the machinery and equipment that may be made available by the county for such purposes under written contract, and the county shall receive from such landowners and taxpayers compensation, upon such uniform basis as may be deemed equitable, and proper, for the cooperation extended and services rendered, all such compensation or funds to the county to be paid into the Road and Bridge Fund of the county; and the county commissioners' court may provide for payments from landowners and taxpayers of the county at such stated intervals and in such amounts, as and when the county taxes are collected, as may be equitable, for the use of the equipment for the protection of lands against continuing immeasurable injury through soil erosion; provided that the commissioners' court or representative thereof shall not go upon the land of any owner to improve, terrace, protect, or ditch such land until requested to

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do so in writing by such owner; and provided further, that the commissioners' court or representative thereof shall not be required to do such improving, terracing, protecting and ditching unless such court shall determine that such work is of some public benefit and said court elects to do the work."

Section 3 and Section 4 of Article 2372c, just quoted, clearly sets forth the manner in which, and the circumstances and conditions under which the machinery belonging to a county of this state may be used for the purpose of preserving the productiveness in agricultural products necessary to the public welfare. However, we know of no law, which would make a commissioner who permits the machinery of the county to be used without meeting the requirements as set forth in Sections 3 and 4 of Article 2372c, subject to prosecution for a penal offense.

We know of no authority for a commissioner to make special contract work with the road machinery of the county without the consent of the court. However, it is our opinion, that by so doing the commissioner does not violate any penal statute of this state. Interesting questions involving the interpretation and enforcement of contracts would naturally arise as a result of a commissioner acting without authority in entering into an agreement with an individual or individuals, to use county road machinery in doing work for said individual or individuals, but such questions do not arise in your request for an opinion in this instance.

In view of the provisions of Article 2372f of the Revised Civil Statutes of the state of Texas, it is our opinion that a commissioner does not violate a penal statute of this state in using a pick-up bought and paid for out of county funds in the administration of his business as commissioner and in going to and from court meetings.

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Article 2372f of Vernon's Revised Civil Statutes of the state of Texas, reads in part as follows:

"The commissioners' court is hereby authorized to allow each commissioner to purchase a pickup truck to be used in each respective precinct on official business and it shall be paid for out of the Road and Bridge Fund of the respective commissioners' precincts, and each commissioner shall make under oath an account of his expenditures for such purpose."

Trusting that the foregoing answers your inquiry, we remain

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Fred C. Chandler*

Fred C. Chandler
Assistant

FCG:AN

APPROVED:

Gerard E. Mann
ATTORNEY GENERAL OF TEXAS